

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD LAWRENCE LATTING, JR.,

Plaintiff-Appellant/Cross-Appellee,

v

DAVID PENNELL,

Defendant-Appellee/Cross-
Appellant,

and

DAVID CLAY,

Defendant-Appellee,

and

HURLEY BOARD OF HOSPITAL MANAGERS,
d/b/a HURLEY MEDICAL CENTER, FLINT
SURGICAL SPECIALISTS, P.C., and
ASSOCIATED RADIOLOGISTS OF FLINT, P.C.,

Intervening Parties.

Before: O'Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment, entered following a jury trial, that awarded him \$58,537.20 against defendant David Clay and \$9,756.20 against defendant David Pennell. Medical lienholders were awarded an additional amount of \$33,702.20. Defendant Pennell cross appeals, challenging the trial court's denial of his motion for a directed verdict. We affirm.

This action arises from a September 6, 2000, tractor accident in which plaintiff was struck by a tractor owned by defendant Pennell and driven by defendant Clay while baling hay on defendant Pennell's farm. Plaintiff alleged that Clay was negligent in his operation of the tractor and that Pennell was negligent in entrusting the tractor to Clay without adequately ensuring that Clay would be able to safely operate the tractor. The jury found that Clay was 60

percent at fault, that Pennell was ten percent at fault, and that plaintiff was 30 percent comparatively negligent.

I. Admissibility of X-Ray

We first address plaintiff's argument that the trial court erred by precluding him from introducing into evidence an x-ray of his condition that was taken shortly before trial. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

Plaintiff argues that the x-ray was relevant to show his current condition, because he continued to experience pain from his injuries. However, the trial court did not prevent plaintiff from presenting evidence of his current condition. It only barred him from presenting the x-ray because it was taken just 12 days before trial, and defendants did not have sufficient time to review or respond to it. A party may be barred from relying on information that was not previously disclosed in discovery. *Foehr v Republic Automotive Parts, Inc*, 212 Mich App 663, 670; 538 NW2d 420 (1995). See also *Settingrington v Pontiac Gen Hosp*, 223 Mich App 594, 604-605; 568 NW2d 93 (1997). Under the circumstances, the trial court's decision to allow plaintiff to testify about his current condition and the continuing impact of his injuries, and to also allow plaintiff's treating physicians to offer their opinion testimony regarding whether plaintiff's continuing limitations and complaints of pain were reasonable or expected considering the nature of his injuries, but to disallow the x-ray because it was not timely produced, was within the range of reasonable and principled outcomes. Therefore, the court did not abuse its discretion.

II. Denial of Motion for a New Trial or Additur

Plaintiff argues that the jury's award of damages was clearly inadequate and that the trial court therefore erred in denying his motion for a new trial or additur. This Court reviews a trial court's decision on a motion for additur or a new trial for an abuse of discretion. *Hill v Sacka*, 256 Mich App 443, 460; 666 NW2d 282 (2003). "When reviewing a trial court's decision on additur, this Court must consider whether the jury award was supported by the evidence." *Id.* This Court will uphold the jury's verdict if an interpretation of the evidence provides a logical explanation for the jury's findings. *Id.* at 461.

Plaintiff argues that the evidence supported a much greater verdict, and attributes the jury's award of only \$15,000 for future noneconomic damages to the fact that he was not permitted to offer the recent x-ray to show the continuing effect of his injuries. As explained previously, despite the exclusion of the x-ray, plaintiff was permitted to testify about his current condition and the continuing effects of his injuries. He was also permitted to offer the testimony of his treating physicians on that subject. Even if an x-ray could have further corroborated that plaintiff was still experiencing the effects of his injuries, it could not have quantified the degree of pain that plaintiff was currently experiencing, or his current limitations. In this regard, however, plaintiff admitted that, with some adjustments, he had resumed most of the activities he participated in before the accident, except for running (which he did very little of before the

accident) and horseback riding. This testimony, which an x-ray would not have affected, logically supports the jury's decision to limit future noneconomic damages to \$15,000.

With regard to the jury's remaining awards of damages, it is not the function of this Court, nor the trial court, to substitute its judgment for that of the jury with respect to damages, but to only determine whether the amounts awarded by the jury are supported by the evidence. Although there was evidence that could have supported greater awards for past noneconomic damages and wage loss, the jury's awards were not clearly outside the scope of the evidence. Thus, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial or additur.

III. Statutory Interest

Plaintiff argues that the trial court erred by failing to award him 12 percent statutory interest pursuant to MCL 600.6013(5), and by not allowing him to recover interest for the period this matter was stayed pending the resolution of a related insurance dispute. We find no error.

We find no merit to plaintiff's argument that he was entitled to 12 percent statutory interest under MCL 600.6013(5), which applies to actions in which "judgment is rendered on a written instrument." The judgments against defendants Pennell and Clay were based on their liability to plaintiff for negligence, not on any written instrument. The applicability of insurance coverage may provide a source for satisfying that liability, but it is not a basis for imposing liability against defendants in the first instance. The trial court properly determined that interest should instead be awarded in accordance with MCL 600.6013(8). Further, because the parties stipulated that this matter could be stayed pending resolution of the related insurance dispute,¹ and thus the delay was not caused by, or the fault of, defendants, the trial court did not err by declining to award interest for the period the matter was stayed. *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483, 494-495; 478 NW2d 914 (1991); *Heyler v Dixon*, 160 Mich App 130, 151-153; 408 NW2d 121 (1987).

IV. Defendant Pennell's Cross-Appeal

Defendant Pennell asserts that his issue on cross appeal need only be addressed if this Court determines that plaintiff is entitled to a new trial. Because we are affirming the trial court's judgment, we decline to address defendant Pennell's cross-appeal.

¹ See *Farm Bureau Gen Ins Co of Michigan v Latting*, unpublished opinion per curiam of the Court of Appeals (Docket No. 255964, issued December 22, 2005), rev'd 477 Mich 852 (2006).

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

/s/ Cynthia Diane Stephens